



November 5, 2001

Mr. Robert J. Gervais
City Attorney
City of Texas City
P.O. Drawer 2608
Texas City, Texas 77592-2608

OR2001-5090

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154361.

The City of Texas City (the "city") received written requests from two individuals for information in connection with a recent standoff and shooting of three city police officers. The first requestor seeks "all public records pertaining to Michael Hamm, specifically any and all offense or incident reports regarding Mr. Hamm from the years 1992-97 or any reports relating to a charge of indecency with a child involving Mr. Hamm." The second requestor seeks the "Incident Report on Michael Wayne Hamm." You state that some responsive information has been released to both requestors. You contend, however, that records from two criminal investigations are excepted from required public disclosure pursuant to sections 552.101 and 552.108(a)(1), respectively, of the Government Code.

You first contend that records pertaining to a 1992 investigation of "Indecency with a Child" must be withheld in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

After reviewing the information at issue, we conclude that the records from the 1992 investigation come within the scope of section 261.201 of the Family Code. You state that the city has not adopted a rule that governs the release of this type of information. Therefore, the city must withhold these records in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

You contend that the records pertaining to the shooting incident is excepted from public disclosure pursuant to section 552.108(a)(1) of the Government Code, which excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You state that the records pertaining to the shooting incident relate to a pending criminal investigation and that the case "is to go before the grand jury." We therefore conclude that the city may withhold most of these records pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Accordingly, the city must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Because it appears that the city has previously released the "basic information" to the requestor, we conclude that no additional information need be released at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

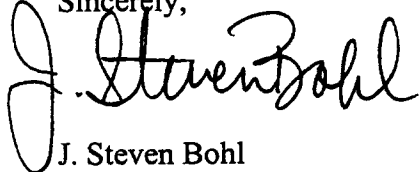
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/RWP/sdk

Ref: ID# 154361

Enc. Submitted documents

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